IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

EDWIN WALLACE KILLIAN, III,	§	
#1010805 ,	§	
	§	
Petitioner,	§	
v.	§	Civil Action No. 3:10-CV-2615-L
	§	
RICK THALER, Director,	§	
Texas Department of Criminal Justice,	§	
Correctional Institutions Division ,	§	
	§	
Respondent.	§	

ORDER

Before the court is Petitioner Edwin Wallace Killian, III's "Motion to Correct Sentence," which challenges his underlying conviction and 17-year criminal sentence, filed December 21, 2010. This case was referred to United States Magistrate Judge Renee Harris Toliver pursuant to the provisions of 28 U.S.C. § 636(b). On January 18, 2011, Petitioner filed written correspondence stating that he will withdraw his "Motion to Correct Sentence" and reserve the right to resubmit it in the future. The magistrate judge entered Findings, Conclusions and Recommendation of the United States Magistrate Judge ("Report") on January 21, 2011.

The magistrate judge determines, and the court agrees, that Petitioner's "Motion to Correct Sentence" is rightly characterized as a habeas corpus petition under 28 U.S.C. § 2254, and that his written correspondence is rightly construed as a voluntary motion to dismiss under Rule 41(a) of the Federal Rules of Civil Procedure. Accordingly, the magistrate judge recommends that the court grant the motion and dismiss Petitioner's § 2254 petition without prejudice. Normally, the court waits at least 14 days before ruling on a magistrate judge's findings and recommendation to allow

the parties sufficient time to file objections to the Report. In this case, however, Petitioner has voluntarily requested dismissal of his petition, and there is no reason to conclude that he would oppose or object to the magistrate judge's recommendation to grant his request.

After reviewing the petition, filings, Report, and record, the court agrees with the magistrate judge. The court accordingly determines that the magistrate judge's findings and conclusions are correct. They are **accepted** as those of the court. The court **dismisses without prejudice** the "Motion to Correct Sentence," which the court treats as a habeas corpus petition, pursuant to Petitioner's request and Rule 41(a) of the Federal Rules of Civil Procedure.

It is so ordered this 28th day of January, 2011.

Sam Q. Lindsay

United States District Judge